

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

**SHAWN STEWART, BRIAN DAMANN, &
GRANT OILAR, individually and on behalf of
all others similarly situated**

Plaintiffs,

v.

**USA TANK SALES AND ERECTION
COMPANY, INC.,**

Defendant.

Case No. 3:12-CV-05136-DGK

PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

Plaintiffs move this Court for an Order granting preliminary approval to the proposed Settlement Agreement. In addition, Plaintiffs move this Court to hold a preliminary approval hearing.

Plaintiffs brought claims on behalf of themselves and others similarly situated pursuant to the Fair Labor Standards Act and MMWMHL alleging that there were not properly paid overtime for hours they worked over forty in a week.

In support of their Motion, Plaintiffs incorporate by reference their Suggestions in Support of Plaintiffs' Motion for Preliminary Approval of Settlement, which is filed contemporaneously herewith. A copy of the Settlement Agreement is attached thereto as Exhibit 1.

This FLSA and State Law Settlement Agreement was reached as the result of contested litigation and resolves *bona fide* disputes between the Parties over wage and hour law coverage and claims. The Settlement is eminently fair, reasonable, and adequate, and provides eligible individuals the opportunity for meaningful monetary recovery to resolve disputed wage claims.

For these reasons, and those more fully set forth above and in the attached exhibits, Plaintiffs respectfully request that the Court preliminarily approve the Settlement Agreement, allow notice to be sent to Class Members/putative plaintiffs, enter the proposed Order, attached as Exhibit – to the Settlement Agreement (“Preliminary Approval Order”), and otherwise grant this Motion for Preliminary Approval of Settlement and all relief specifically set forth therein such as:

- a. Entering an Order which directs the Parties to execute the Settlement Agreement within seven (7) days of the date of such Order;
- b. Entering an Order which directs the Plaintiffs to file the Amended Complaint referred to in the Settlement Agreement within seven (7) days of the date of such Order;
- c. Entering an Order which preliminarily approves the Settlement Agreement, subject to further consideration thereof at the Final Approval Hearing provided for below;
- d. Entering an Order which conditionally certifies the Federal Settlement Class;
- e. Entering an Order which conditionally certifies the State Settlement Class;
- f. Entering an Order which conditionally finds that Shawn Stewart, Brian Damann, and Grant Oilar are adequate class representatives for the Settlement Classes.
- g. Entering an Order which finds that Settlement Class Counsel are adequate to serve as class counsel and which appoints interim class counsel for the Settlement Classes pursuant to Fed. R. Civ. P. 23(g).
- h. Entering an Order which provides that any person who does not elect to be excluded from the Settlement Classes may, but not need to, enter an appearance through his or her own attorney, and that Settlement Class Members who do not enter an appearance through their own attorneys will be represented by Settlement Class Counsel.
- i. Entering an Order which approves as to form and content the proposed Notice and Claim Form;

- j. Entering an Order which directs the mailing of the Notice and Claim Form by first class mail to the Class Members and/or putative plaintiffs pursuant to the manner set forth in Section 11 of the Settlement Agreement.
- k. Entering an Order which directs the Claims Administrator to issue Notices on or before the date fifty (50) days from the date of such Order.
- l. Entering an Order which directs the Parties to ensure that notice is disseminated according to the terms of Section 11 of the Settlement Agreement.
- m. Entering an Order which provides that Settlement Class Members may request exclusion from the Settlement or object to the Settlement no later than twenty-one (21) days prior to the Final Approval Hearing.
- n. Entering an Order which provides that Settlement Class Members may file a Claim Form up to thirty (30) days after the Final Approval Hearing, which must be postmarked by that date.
- o. Entering an Order which finds that the Notices set forth in the Settlement Agreement are the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23, due process, the Constitution of the United States, the laws of Missouri, and all other applicable laws.
- p. Entering an Order which authorizes the Parties and their respective counsel to retain Angeion Group to serve as the Claims Administrator in accordance with the terms of the Settlement Agreement and such Order.
- q. Entering an Order which enjoins Class Members who do not timely request to be excluded from proceeding against the Defendant for the state law claims made in the Amended Complaint.

- r. Entering an Order which enjoins Class Members who timely submit a Valid Claim Form from proceeding against the Defendant for the federal and state law claims made in the Amended Complaint.
- s. Entering an Order which provides that any person who does not elect to be excluded from the Settlement may, but need not, submit comments or objections to the proposed Settlement, entry of Final Order and Judgment approving the settlement, or Settlement Class Counsel's application for Attorneys' Fees and Lawsuit Costs by filing and serving a written objection.
- t. Scheduling a Final Approval Hearing of the Settlement (the "Final Approval Hearing") to be held before this Court to consider the fairness, reasonableness, and adequacy of the proposed Settlement, the dismissal with prejudice of the above-captioned action with respect to Defendant herein, and the entry of final judgment.
- u. Entering an Order which provides that any application for an award of Attorneys' Fees and Lawsuit Costs and any application for Incentive Awards shall be filed with the Court no later than thirty (30) days prior to the Final Approval Hearing.
- v. Entering an Order which provides that only Settlement Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Final Approval Hearing.
- w. Entering an Order which provides that all reasonable costs incurred in notifying Settlement Class Members, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.
- x. Entering an Order which provides that if the Settlement Agreement is terminated or not consummated for any reason whatsoever, the conditional certification of the Settlement Classes shall be void, and Defendant, pursuant to the terms of the Settlement Agreement, shall have

reserved all rights to oppose any and all class certification motions, to contest the adequacy of any Plaintiff as representative of any putative class, and to contest the adequacy of Plaintiffs' counsel as adequate Settlement Class Counsel.

- y. Entering an Order which provides that if the Settlement Agreement is terminated or not consummated for any reason whatsoever, Plaintiffs, pursuant to the terms of the Settlement Agreement, reserve all rights, including the right to continue with the litigation as set forth in the Settlement Agreement.
- z. Entering an Order which provides that immediately upon the entry of this Order, and until the dismissal of this case, all Settlement Class Members shall be and are enjoined pursuant to 28 U.S.C. § 1651(a) from initiating or proceeding with any and all suits, actions, causes of action, claims, or demands in federal or state court based on putative violations of the Fair Labor Standards Act or any state or local law (including statutory, regulatory, and common law) pertaining to hours of work or payment of wages, including without limitation all claims that were or could have been asserted in the above-captioned case by or on behalf of Tank Makers who worked for USA Tank within the applicable proposed Class Periods.

Plaintiffs respectfully request that the Court schedule a preliminary approval hearing not less than thirty (30) days from the filing of this motion.

Respectfully Submitted,

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s/ Jason T. Brown

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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